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12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14 ALEXANDRA BARILARI, an
15 individual,

16 Plaintiff,

17 vs.

18 MUFG UNION BANK, a national
19 banking association; TRANS UNION,
20 LLC, a Delaware limited liability
company, and DOES 1-10, inclusive,

21 Defendants.

22 Case No. 2:18-cv-8928 SJO (JEMx)
23 *Assigned to the Hon. S. James Otero,
24 Ctrm. 10C*

25 **STIPULATION AND
26 PROTECTIVE ORDER**

27 Complaint Filed: October 16, 2018
28 Trial Date: January 7, 2020

1 IT IS HEREBY STIPULATED by and between the Parties to *Alexandra*
2 *Barilari v. MUFG Union Bank; Trans Union, LLC*, by and through their respective
3 counsel of record, that in order to facilitate the exchange of information and
4 documents which may be subject to confidentiality limitations on disclosure due to
5 federal laws, state laws, and privacy rights, the Parties stipulate as follows:

6 **1. PURPOSES AND LIMITATIONS**

7 Discovery in this action is likely to involve production of confidential,
8 proprietary or private information for which special protection from public
9 disclosure and from use for any purpose other than pursuing this litigation may be
10 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
11 enter the following Stipulated Protective Order. The parties acknowledge that this
12 Order does not confer blanket protections on all disclosures or responses to
13 discovery and that the protection it affords from public disclosure and use extends
14 only to the limited information or items that are entitled to confidential treatment
15 under the applicable legal principles.

16 **2. GOOD CAUSE STATEMENT**

17 This action is likely to involve policies and procedures, trade secrets,
18 consumer information, commercial, financial, technical and/or proprietary
19 information for which special protection from public disclosure and from use for
20 any purpose other than prosecution of this action is warranted. Such confidential
21 and proprietary materials and information consist of, among other things, policies
22 and procedures, consumer information, confidential business or financial
23 information, information regarding confidential business practices, or other
24 confidential research, development, or commercial information (including
25 information implicating privacy rights of third parties), information otherwise
26 generally unavailable to the public, or which may be privileged or otherwise
27 protected from disclosure under state or federal statutes, court rules, case decisions,
28 or common law. Accordingly, to expedite the flow of information, to facilitate the

1 prompt resolution of disputes over confidentiality of discovery materials, to
2 adequately protect information the parties are entitled to keep confidential, to
3 ensure that the parties are permitted reasonable necessary uses of such material in
4 preparation for and in the conduct of trial, to address their handling at the end of
5 the litigation, and serve the ends of justice, a protective order for such information
6 is justified in this matter. It is the intent of the parties that information will not be
7 designated as confidential for tactical reasons and that nothing be so designated
8 without a good faith belief that it has been maintained in a confidential, non-public
9 manner, and there is good cause why it should not be part of the public record of
10 this case.

11 **3. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE**

12 The parties further acknowledge, as set forth in Section 14.3, below, that this
13 Stipulated Protective Order does not entitle them to file confidential information
14 under seal; *Local Civil Rule 79-5* sets forth the procedures that must be followed
15 and the standards that will be applied when a party seeks permission from the court
16 to file material under seal. There is a strong presumption that the public has a right
17 of access to judicial proceedings and records in civil cases. In connection with
18 non-dispositive motions, good cause must be shown to support a filing under seal.
19 See *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir.
20 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002),
21 *Makar-Welbon v. Sony Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even
22 stipulated protective orders require good cause showing), and a specific showing of
23 good cause or compelling reasons with proper evidentiary support and legal
24 justification, must be made with respect to Protected Material that a party seeks to
25 file under seal. The parties' mere designation of Disclosure or Discovery Material
26 as CONFIDENTIAL does not – without the submission of competent evidence by
27 declaration, establishing that the material sought to be filed under seal qualifies as
28 confidential, privileged, or otherwise protectable constitute good cause.

1 Further, if a party requests sealing related to a dispositive motion or trial,
2 then compelling reasons, not only good cause, for the sealing must be shown, and
3 the relief sought shall be narrowly tailored to serve the specific interest to be
4 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79
5 (9th Cir. 2010). For each item or type of information, document, or thing sought to
6 be filed or introduced under seal, the party seeking protection must articulate
7 compelling reasons, supported by specific facts and legal justification, for the
8 requested sealing order. Again, competent evidence supporting the application to
9 file documents under seal must be provided by declaration.

10 Any document that is not confidential, privileged, or otherwise protectable
11 in its entirety will not be filed under seal if the confidential portions can be
12 redacted. If documents can be redacted, then a redacted version for public
13 viewing, omitting only the confidential, privileged, or otherwise protectable
14 portions of the document, shall be filed. Any application that seeks to file
15 documents under seal in their entirety should include an explanation of why
16 redaction is not feasible.

17 **4. DEFINITIONS**

18 4.1 Action: Alexandra Barilari v. MUFG Union Bank; Trans Union, LLC;
19 U.S.D.C. Case No. 2:18-cv-8928 SJO (JEMx).

20 4.2 Challenging Party: a Party or Non-Party that challenges the
21 designation of information or items under this Order.

22 4.3 "CONFIDENTIAL" Information or Items: information (regardless of
23 how it is generated, stored or maintained) or tangible things that qualify for
24 protection under *Federal Rule of Civil Procedure* 26(c), and as specified above in
25 the Good Cause Statement.

26 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
27 their support staff).

1 4.5 Designating Party: a Party or Non-Party that designates information
2 or items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 4.6 Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced
7 or generated in disclosures or responses to discovery.

8 4.7 Expert: a person with specialized knowledge or experience in a
9 matter pertinent to the litigation who has been retained by a Party or its counsel to
10 serve as an expert witness or as a consultant in this Action.

11 4.8 House Counsel: attorneys who are employees of a party to this
12 Action. House Counsel does not include Outside Counsel of Record or any other
13 outside counsel.

14 4.9 Non-Party: any natural person, partnership, corporation, association
15 or other legal entity not named as a Party to this action.

16 4.10 Outside Counsel of Record: attorneys who are not employees of a
17 party to this Action but are retained to represent a party to this Action and have
18 appeared in this Action on behalf of that party or are affiliated with a law firm that
19 has appeared on behalf of that party, and includes support staff.

20 4.11 Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 4.13 Professional Vendors: persons or entities that provide litigation
26 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)
28 and their employees and subcontractors.

1 4.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 4.15 Receiving Party: a Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5 **5. SCOPE**

6 The protections conferred by this Stipulation and Order cover not only
7 Protected Material (as defined above), but also (1) any information copied or
8 extracted from Protected Material; (2) all copies, excerpts, summaries, or
9 compilations of Protected Material; and (3) any testimony, conversations, or
10 presentations by Parties or their Counsel that might reveal Protected Material.

11 Any use of Protected Material at trial shall be governed by the orders of the
12 trial judge and other applicable authorities. This Order does not govern the use of
13 Protected Material at trial.

14 **6. DURATION**

15 Once a case proceeds to trial, information that was designated as
16 CONFIDENTIAL or maintained pursuant to this protective order used or
17 introduced as an exhibit at trial becomes public and will be presumptively
18 available to all members of the public, including the press, unless compelling
19 reasons supported by specific factual findings to proceed otherwise are made to the
20 trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81
21 (distinguishing “good cause” showing for sealing documents produced in
22 discovery from “compelling reasons” standard when merits-related documents are
23 part of court record). Accordingly, the terms of this protective order do not extend
24 beyond the commencement of the trial.

25 **7. DESIGNATING PROTECTED MATERIAL**

26 7.1 Exercise of Restraint and Care in Designating Material for Protection.
27 Each Party or Non-Party that designates information or items for protection under
28 this Order must take care to limit any such designation to specific material that

1 qualifies under the appropriate standards. The Designating Party must designate
2 for protection only those parts of material, documents, items or oral or written
3 communications that qualify so that other portions of the material, documents,
4 items or communications for which protection is not warranted are not swept
5 unjustifiably within the ambit of this Order.

6 Mass, indiscriminate or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper
8 purpose (e.g., to unnecessarily encumber the case development process or to
9 impose unnecessary expenses and burdens on other parties) may expose the
10 Designating Party to sanctions.

11 If it comes to a Designating Party's attention that information or items that it
12 designated for protection do not qualify for protection, that Designating Party must
13 promptly notify all other Parties that it is withdrawing the inapplicable designation.

14 **7.2 Manner and Timing of Designations.** Except as otherwise provided in
15 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
16 that qualifies for protection under this Order must be clearly so designated before
17 the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic
20 documents, but excluding transcripts of depositions or other pretrial or trial
21 proceedings), that the Producing Party affix at a minimum, the legend
22 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
23 contains protected material. If only a portion of the material on a page qualifies for
24 protection, the Producing Party also must clearly identify the protected portion(s)
25 (e.g., by making appropriate markings in the margins).

26 A Party or Non-Party that makes original documents available for inspection
27 need not designate them for protection until after the inspecting Party has indicated
28 which documents it would like copied and produced. During the inspection and

1 before the designation, all of the material made available for inspection shall be
2 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
3 documents it wants copied and produced, the Producing Party must determine
4 which documents, or portions thereof, qualify for protection under this Order.
5 Then, before producing the specified documents, the Producing Party must affix
6 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
7 only a portion of the material on a page qualifies for protection, the Producing
8 Party also must clearly identify the protected portion(s) (e.g., by making
9 appropriate markings in the margins).

10 (b) for testimony given in depositions that the Designating Party
11 identifies the Disclosure or Discovery Material on the record, before the close of
12 the deposition all protected testimony.

13 (c) for information produced in some form other than documentary
14 and for any other tangible items, that the Producing Party affix in a prominent
15 place on the exterior of the container or containers in which the information is
16 stored the legend “CONFIDENTIAL.” If only a portion or portions of the
17 information warrants protection, the Producing Party, to the extent practicable,
18 shall identify the protected portion(s).

19 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive
21 the Designating Party’s right to secure protection under this Order for such
22 material. Upon timely correction of a designation, the Receiving Party must make
23 reasonable efforts to assure that the material is treated in accordance with the
24 provisions of this Order.

25 **8. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 8.1 Timing of Challenges. Any Party or Non-Party may challenge a
27 designation of confidentiality at any time that is consistent with the Court’s
28 Scheduling Order.

1 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under *Local Rule 37-1, et seq.*

3 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
4 joint stipulation pursuant to *Local Rule 37-2*.

5 8.4 Burden of Persuasion. The burden of persuasion in any such
6 challenge proceeding shall be on the Designating Party. Frivolous challenges, and
7 those made for an improper purpose (e.g., to harass or impose unnecessary
8 expenses and burdens on other parties) may expose the Challenging Party to
9 sanctions. Unless the Designating Party has waived or withdrawn the
10 confidentiality designation, all parties shall continue to afford the material in
11 question the level of protection to which it is entitled under the Producing Party's
12 designation until the Court rules on the challenge.

13 **9. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 9.1 Basic Principles. A Receiving Party may use Protected Material that
15 is disclosed or produced by another Party or by a Non-Party in connection with this
16 Action only for prosecuting, defending or attempting to settle this Action. Such
17 Protected Material may be disclosed only to the categories of persons and under
18 the conditions described in this Order. When the Action has been terminated, a
19 Receiving Party must comply with the provisions of section 15 below (FINAL
20 DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a
22 location and in a secure manner that ensures that access is limited to the persons
23 authorized under this Order.

24 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
25 otherwise ordered by the court or permitted in writing by the Designating Party, a
26 Receiving Party may disclose any information or item designated
27 “CONFIDENTIAL” only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and

Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediators or settlement officers and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

**10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such

1 information produced by Non-Parties in connection with this litigation is protected
2 by the remedies and relief provided by this Order. Nothing in these provisions
3 should be construed as prohibiting a Non-Party from seeking additional
4 protections.

5 (b) In the event that a Party is required, by a valid discovery
6 request, to produce a Non-Party's confidential information in its possession, and
7 the Party is subject to an agreement with the Non-Party not to produce the Non-
8 Party's confidential information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and the
10 Non-Party that some or all of the information requested is subject to a
11 confidentiality agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the
13 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
14 reasonably specific description of the information requested; and

15 (3) make the information requested available for inspection
16 by the Non-Party, if requested.

17 (c) If the Non-Party fails to seek a protective order from this court
18 within 14 days of receiving the notice and accompanying information, the
19 Receiving Party may produce the Non-Party's confidential information responsive
20 to the discovery request. If the Non-Party timely seeks a protective order, the
21 Receiving Party shall not produce any information in its possession or control that
22 is subject to the confidentiality agreement with the Non-Party before a
23 determination by the court. Absent a court order to the contrary, the Non-Party
24 shall bear the burden and expense of seeking protection in this court of its
25 Protected Material.

26 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has
28 disclosed Protected Material to any person or in any circumstance not authorized

1 under this Stipulated Protective Order, the Receiving Party must immediately
2 (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use
3 its best efforts to retrieve all unauthorized copies of the Protected Material,
4 (c) inform the person or persons to whom unauthorized disclosures were made of
5 all the terms of this Order, and (d) request such person or persons to execute the
6 “Acknowledgment an Agreement to Be Bound” attached hereto as Exhibit A.

7 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
8 **PROTECTED MATERIAL**

9 When a Producing Party gives notice to Receiving Parties that certain
10 inadvertently produced material is subject to a claim of privilege or other
11 protection, the obligations of the Receiving Parties are those set forth in *Federal*
12 *Rule of Civil Procedure 26(b)(5)(B)*. This provision is not intended to modify
13 whatever procedure may be established in an e-discovery order that provides for
14 production without prior privilege review. Pursuant to *Federal Rule of Evidence*
15 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
16 of a communication or information covered by the attorney-client privilege or
17 work product protection, the parties may incorporate their agreement in the
18 stipulated protective order submitted to the Court.

19 **14. MISCELLANEOUS**

20 14.1 Right to Further Relief. Nothing in this Order abridges the right of
21 any person to seek its modification by the Court in the future.

22 14.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order, no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in
25 this Stipulated Protective Order. Similarly, no Party waives any right to object on
26 any ground to use in evidence of any of the material covered by this Protective
27 Order.

1 14.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with *Local Civil Rule 79-5*. Protected Material
3 may only be filed under seal pursuant to a court order authorizing the sealing of the
4 specific Protected Material. If a Party's request to file Protected Material under
5 seal is denied by the court, then the Receiving Party may file the information in the
6 public record unless otherwise instructed by the Court.

7 **15. FINAL DISPOSITION**

8 After the final disposition of this Action, as defined in paragraph 6, within
9 60 days of a written request by the Designating Party, each Receiving Party must
10 return all Protected Material to the Producing Party or destroy such material. As
11 used in this subdivision, "all Protected Material" includes all copies, abstracts,
12 compilations, summaries, and any other format reproducing or capturing any of the
13 Protected Material. Whether the Protected Material is returned or destroyed, the
14 Receiving Party must submit a written certification to the Producing Party (and, if
15 not the same person or entity, to the Designating Party) by the 60-day deadline that
16 (1) identifies (by category, where appropriate) all the Protected Material that was
17 returned or destroyed and (2) affirms that the Receiving Party has not retained any
18 copies, abstracts, compilations, summaries or any other format reproducing or
19 capturing any of the Protected Material. Notwithstanding this provision, Counsel
20 are entitled to retain an archival copy of all pleadings, motion papers, trial,
21 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
22 and trial exhibits, expert reports, attorney work product, and consultant and expert
23 work product, even if such materials contain Protected Material. Any such
24 archival copies that contain or constitute Protected Material remain subject to this
25 Protective Order as set forth in Section 6 (DURATION).

26
27
28

1 **16. VIOLATION**

2 Any violation of this Order may be punished by appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.

4 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

6 Dated: May 13, 2019

BARTON KLUGMAN & OETTING, LLP

8 By: /s/ Tod V. Beebe
9 Tod V. Beebe, APC
10 Attorneys for Defendant
11 MUFG UNION BANK, N.A.

11 Dated: May 13, 2019

AIDAN W. BUTLER

13 By: /s/ Aidan W. Butler
14 Aidan W. Butler
15 Attorneys for Plaintiff
16 Alexandra Barilari

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: 5/14/2019



21 JOHN E. McDERMOTT
22 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Protective Order that was issued
7 by the United States District Court for the Central District of California on
8 _____ in the case of *Alexandria Barilari v. MUFG Union*
9 *Bank; Trans Union, LLC*, U.S.D.C. Case No. 2:18-cv-8928 SJO (JEMx). I agree
10 to comply with and to be bound by all the terms of this Protective Order and I
11 understand and acknowledge that failure to so comply could expose me to
12 sanctions and punishment in the nature of contempt. I solemnly promise that I will
13 not disclose in any manner any information or item that is subject to this Protective
14 Order to any person or entity except in strict compliance with the provisions of this
15 Order.

16 I further agree to submit to the jurisdiction of the United States District
17 Court for the Central District of California for the purpose of enforcing the terms
18 of this Protective Order, even if such enforcement proceedings occur after
19 termination of this action. I hereby appoint _____ [print
20 or type full name] of _____ [print or
21 type full address and telephone number] as my California agent for service of
22 process in connection with this action or any proceedings related to enforcement of
23 this Protective Order.

24 | Date: _____

25 | City and State where sworn and signed:

26 | _____

27 Printed name: _____

28 | Signature: _____